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MM Dkt. No. 98-43

MM Dkt. No. 94-149

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

KRTS, Inc., by counsel and pursuant to Section 1.429 of the Commission's Rules, hereby seeks limited reconsideration of the above-captioned *Report & Order*, FCC 98-281 (released November 25, 1998). Specifically, KRTS requests that the Commission clarify the impact of its new broadcast construction permit policy on permittees that are granted permits subject to a condition preventing the implementation of the authorized facilities until other events have occurred, *e.g.*, the relocation of another broadcast station to a new channel.

KRTS has found itself in just such a circumstance over the last four years. In 1995, it was granted a construction permit to upgrade its facilities on Channel 22.1C2 from Class C2 to Class C1. This authorization, however, was subject to an express

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condition stating that program tests for this facility may not commence until Station KTSR, College Station, Texas has moved from Channel 221 and commenced its own program testing on either Channel 236 or Channel 297. As of this date, this condition on the KRTS permit has not yet been satisfied, and it has therefore been necessary for KRTS to seek several extensions of its original permit.^{1/}

In the *Report & Order*, the Commission has established a new three-year construction period for broadcast facilities, and has also outlined two specific types of "encumbrances" that would toll the construction period during the time that the permittee was prevented from proceeding with construction due to causes not under its control. Unless a permit is subject to tolling, it will become null and void at the end of three years. *See Report & Order*, FCC 98-281, slip op. at ¶¶ 77-90 (released November 25, 1998).

The first type of encumbrance specified is "an act of God," *i.e.*, a natural disaster such as a hurricane or earthquake. *See* FCC Rule 73.3598(b)(i), as revised. The only other type of encumbrance specifically recognized in the rule is the pendency of administrative or judicial review involving the permit itself or the pendency of a judicial proceeding "before any court of competent jurisdiction relating to any necessary local,

^{1/} KRTS has nonetheless taken the unusual step of securing an "independent interim authorization" that allows it to operate a minimal Class C1 facility (50 kW) at the same transmitter location specified in its full power (100 kW) Class C1 construction permit. Accordingly, KRTS will be able to "complete construction" as soon as Station KTSR vacates Channel 221.

state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.” See FCC Rule 73.3598(b)(ii), as revised. Neither of these provisions covers the circumstance where a permittee’s authority is specifically conditioned pending actions to be undertaken by others.

KRTS does not believe there is a likelihood that the Commission would actually require forfeiture of its conditioned permit simply because more than three years have passed without satisfaction of the condition precedent to the grant of program test authority contained in the permit.^{2/} KRTS also believes, however, that the Commission’s new rules concerning construction permits should be as clear as possible, and should therefore take into account as many identifiable types of circumstances under which relief from the three year construction period is warranted. Because the non-occurrence of a condition precedent that is outside the permittee’s control is a situation that is very likely to apply to other permittees, both currently and in the future, KRTS believes that the Commission should make specific provision for this circumstance under its rules. Accordingly, it proposes that the Commission adopt a third instance under which the three year construction period will be automatically tolled. Specifically, it requests that

^{2/} This is particularly the case with respect to KRTS, which has made unusual efforts to improve its service to the maximum extent possible prior to satisfaction of the condition on its permit. See footnote 1, *supra*.

the Commission adopt the following additional subsection under Revised FCC Rule

73.3598(b) —

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

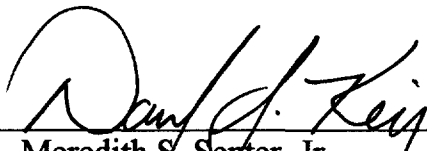
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(iii) the non-occurrence of a condition precedent to grant of program test authority.

There should be no objection to the adoption of this minor clarification, which would reduce confusion and ease the Commission's transition to its new construction permit procedures. For this reason, KRTS strongly urges its adoption on reconsideration.

Respectfully submitted,

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